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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,272	06/01/2006	Paul Robert Dunwoody		3148

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MCLEAN, VA 22102-3833

EXAMINER

GROSSO, HARRY A

ART UNIT	PAPER NUMBER
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3781

NOTIFICATION DATE	DELIVERY MODE
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12/28/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ipdocketing@milesstockbridge.com
sstiles@milesstockbridge.com

Office Action Summary	Application No. 10/581,272	Applicant(s) DUNWOODY ET AL.	
	Examiner HARRY A. GROSSO	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 7, 2009 has been entered.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jordan et al (Jordan) in view of Hansen et al (Hansen) and Esposito, all of record.

3. Regarding claims 1 and 2, Jordan discloses a reclosable beverage container with a metal can body having a base and a side wall (Figure 1), a metal neck component seamed to the body (10) formed as a one-piece unit with a generally frusto-conical shoulder (7), a cylindrical portion (9) and a plastic sleeve (58) that fits over the cylindrical portion of the metal neck component (Figure 17, column 7, line 61 to column 8, line 5).

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4. Jordan discloses a sleeve that extends over the cylindrical portion of the neck but does not teach the sleeve extending over the frusto-conical shoulder. Hansen discloses a plastic sleeve that fits over the cylindrical portion and the frusto-conical shoulder of the neck of a container (46, Figures 1, 2 and 5, column 2, lines 64-65, column 3, lines 21-24) having threads to allow attachment of a closure. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a plastic sleeve that extends over the frusto-conical shoulder of the neck component of a container as well as over the cylindrical portion and as disclosed by Hansen in the container disclosed by Jordan to provide a sleeve that would protect the entire neck component and is known in the art as an alternate to that taught by Jordan.

5. Hansen discloses the sleeve has a detent (72) for securing the sleeve to a container but does not teach the detent attaching the sleeve to the seam and the sleeve extending over a portion of the side wall. Esposito discloses a similar sleeve (Figures 4 and 5, column 3, lines 56-65) that attaches to a container seam with a detent (66) and a skirt (52) that extends over a portion of the side wall to provide increased stability. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of the detent and skirt that extends over a portion of the side wall as disclosed by Esposito in the sleeve disclosed by Jordan as modified by Hansen to provide a means for securing the sleeve to a container with a seam and provide increased stability for the sleeve.

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6. Regarding claims 3 and 4, Jordan discloses the neck component can have a support portion between the cylindrical portion and the frusto-conical shoulder portion as can be seen between the lead-lines for 41 and 49 in Figure 11.

7. Regarding claim 5, Jordan as modified by Hansen and Esposito would have a sleeve that is circumferentially continuous in that Jordan teaches a continuous sleeve that is telescoped over the cylindrical portion and secured in place by a flange (63, Figure 17) and Hansen teaches a continuous portion extending over the shoulder portion and Jordan as modified by Hansen and Esposito would be capable of being circumferentially continuous.

8. Regarding claim 6, the sleeve of Jordan as modified by Hansen and Esposito would not alter flow from the metal container since Jordan teaches the sleeve does not impinge on the container opening.

Response to Arguments

9. Applicant's arguments filed on December 7, 2009 have been fully considered but they are not persuasive. Applicant argues that combining Hansen with Jordan would change a fundamental principle of operation of Jordan in that the objective of Jordan is to "provide improved metal beverage containers which are adapted to be closed by threaded closures." Applicant states that the property of a relatively unobstructed opening is inherent to the principle of an improved metal beverage container and the adapter of Hansen would restrict flow from the outlet opening, thus, changing a fundamental principle of operation of Jordan. In response, Jordan discloses a sleeve that extends over the cylindrical portion of the neck and Hansen is used as a teaching

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for having a plastic sleeve that fits over the frusto-conical shoulder of the neck of a container as well as the cylindrical portion. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). It is not necessary to incorporate the entire sleeve of Hansen bodily into the container of Jordan in order to use Hansen as a teaching of the sleeve that fits over the frusto-conical shoulder of the neck. Additionally, applicant assumes properties for the Jordan container that are not present in Jordan. Specifically, applicant states that the property of a relatively unobstructed opening is inherent to the principle of an improved metal beverage container. Jordan is concerned with improving the metal beverage container by providing methods of forming lighter weight metal beverage containers which are adapted to be closed, and reclosed, by threaded closures. Jordan does not address the subject of a relatively unobstructed opening and there is nothing in Jordan to support the position that a relatively unobstructed opening is inherent to the principle of the improved metal beverage container of Jordan.

10. Applicant argues that the container of Jordan as modified by Hansen and Esposito would not be circumferentially continuous because Hansen includes grooves in the sleeve to allow a bottle to be inserted into and secured to the sleeve of Hansen and Hansen could not be modified to be circumferentially continuous. In response,

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Hansen is used as a teaching for having a plastic sleeve that fits over the frusto-conical shoulder of the neck of a container as well as the cylindrical portion. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). It is not necessary to incorporate the entire sleeve of Hansen bodily into the container of Jordan in order to use Hansen as a teaching of the sleeve that fits over the frusto-conical shoulder of the neck component. Jordan teaches a continuous sleeve that is telescoped over the cylindrical portion of the neck and secured in place by a flange (63, Figure 17, column 8, lines 21-28) eliminating the need for grooves to allow the container to be inserted into and secured to the sleeve. Thus, Jordan as modified by Hansen and Esposito would be capable of being circumferentially continuous. The fact that Hansen can not be modified to be circumferentially continuous is not material to its use as a teaching of a sleeve that fits over the frusto-conical shoulder of the neck component.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HARRY A. GROSSO whose telephone number is (571)272-4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Harry A. Grosso
/Harry A. Grosso/
Examiner, Art Unit 3781

hag